



# Friends of the Sea Otter

Founded in 1968 by Margaret Owings & James Mattison, Jr.

and dedicated to protect and defend a rare and threatened species

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Testimony of Cindy Lowry, Executive Director

Friends of the Sea Otter

Presented at

U. S. Fish and Wildlife Scoping Meetings Regarding

The Notice of Intent to Prepare a Supplement to a Final

Environmental Impact Statement Pertaining to the Translocation of

Southern Sea Otters

At The

Monterey Conference Center

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Good afternoon. My name is Cindy Lowry, and I am the Executive Director of Friends of the Sea Otter.

Consistent with the purpose of a scoping meeting to solicit input on the issues to be addressed in an EIS rather than obtain substantive comments on the action under review, my remarks will focus primarily on what questions and alternatives should be considered during this NEPA review. FSO also will submit detailed written scoping comments.

Before turning to those points, I must put this issue into perspective. These views are offered by a group that was involved in the development of the federal law and FWS' regulations under which the translocation has been conducted and that, for more than 30 years has been the voice for sea otter conservation and science.

Much has been said about the alleged failure of FWS to live up to what some fishing organizations proclaim to be an absolute duty to capture and remove sea otters from the so-called management zone. This claim provides the primary basis for an ill-advised lawsuit filed by a segment of the Santa Barbara fishing community, a lawsuit which forced an unfortunate and premature end to discussions then underway between the environmental and fishing communities to seek consensus solutions to this issue.

Of course, FSO strongly disagrees with this claim on legal and biological grounds. But what cannot be denied is that the sea otter translocation program has not fulfilled its intended purpose and has failed. By now anywhere from 150 to 500 sea otters should be at the San Nicolas Island. There are only 23. As a result of the

translocation program's failure, the sea otter management program, which was created solely as a trade-off for a successful sea otter colony at San Nicolas Island, must now be terminated.

A deal is a deal, and the deal struck in 1986 was that a successful translocation that furthered sea otter recovery would justify a management zone. In addition to the many other compelling reasons to terminate the management zone, the absence of a thriving and successful sea otter population at San Nicolas Island eliminates any grounds upon which capture and removal from the management zone can be called for.

FSO supports the decision making process by FWS. As stated in our letter of January 21, 2000 to Michael Spear, this Supplemental EIS is required not to only serve as the basis for termination of the management zone but also as a prerequisite to actions to implement the existing law. NEPA requires that ongoing federal actions, such as this program, remain subject to the EIS requirement. Because so much has changed since 1986 when FWS prepared the original EIS, FWS is legally required to conduct additional NEPA analysis before it can take any action to enforce the existing regulations. This is FSO's first scoping request -- FWS needs to acknowledge that this Supplemental EIS covers implementation of the existing regulations for the sea otter zonal management program, as well as consideration of future courses of action.

Second, the scoping notice does not accurately reflect the draft revised recovery plan. That plan recommends against the enforcement of the existing management zone, not just "against additional translocations." FWS needs to acknowledge that the expert Recovery Team opposes enforcement of the management zone.

Third, the Supplemental EIS should recognize that "success" of the population and the translocation program can no longer be defined in terms of whether a mere 25 animals are present at the Island, as was the relevant standard in the early 1990s. The question is whether the desired goal of achieving the carrying capacity of the population will ever be reached. Unfortunately, this appears unlikely.

This leads to our first recommendation for an additional alternative: revise the regulations to redefine what constitutes a failed "translocation." The current standards were meant to be applied in the early 1990s. While the translocation fails under both criterion two and three, FWS should also consider promulgating an additional regulatory test which would specify that failure to achieve carrying capacity by this time results in an automatic failure determination.

Fourth, an additional "changed circumstance" must be added to the EIS justification. As a result of improved knowledge about the impact of oil spills on sea otters and the prospects for such a spill in California, it is clear that San Nicolas Island alone is not enough to ensure recovery. The Sea Otter Recovery Team confirmed this changed circumstance in the draft Recovery Plan. Thus, the premise that the use of a management zone to restrict parent range expansion would not be inconsistent with recovery, is no longer valid.

Fifth, related to this issue is the fact that the 1986 law requires the management zone to have been drawn to provide sufficient room for expansion of the recovery of the species. As the Recovery Team acknowledges in the draft Recovery Plan, the current zone does not provide sufficient range and habitat for biological, as well as oil spill risk-

related reasons. Thus, the current zone violates the 1986 law. This legal requirement needs to be taken into account as a reason the so-called "No Action" alternative (i.e., enforcement of the zone) would be illegal.

Sixth, to the extent FWS considers socioeconomics in the Supplemental EIS, a thorough analysis must be done of the economic benefits that will result from allowing sea otters to expand their range throughout the management zone. These benefits include the restoration of kelp communities and the biological diversity and productivity that results. The significant economic benefits that would come from improved fisheries, as well as sea otter-related tourism also must be taken into account. These significant economic benefits must be balanced against a careful assessment of the realistic impacts to the portion of the fishing community that may be affected from sea otter range expansion.

Seventh, a new alternative must be added that considers the authority now available under the Marine Mammal Protection Act to conduct species enhancement and recovery programs. As noted in the scoping notice, in 1986 it was claimed that such authority did not exist; hence, a new law was required. Now that the MMPA and ESA both authorize permits for this purpose, the Supplemental EIS should analyze this using the authority to permit sea otters to be retained at San Nicolas Island after the management zone is eliminated. Clearly, keeping the otters at San Nicolas is a desirable recovery action. The Supplemental EIS should explore the possibility of taking such action under existing law.

And finally, FWS should take immediate action to suspend the regulatory provision for capture and removal during the pendency of this review. Obviously, such a provision is not enforceable for numerous reasons: it violates the jeopardy prohibition; it will result in prohibited lethal take; it is not feasible as required by law; it enforces a zone not consistent with species recovery as required by law; it is not subject to an up-to-date EIS; and other reasons. There is no reason this provision should be kept on the books at this time, and FWS should pursue an interim final rule or other action to suspend that provision until this review is complete.

In conclusion, FSO thanks FWS for undertaking this long overdue review. We remain interested in exploring consensus solutions to this issue that address the legitimate needs of all affected parties, and look forward to working with FWS to craft a workable and common sense solution that ensures the protection and recovery of the southern sea otter. Thank you.